

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ALABAMA



PRO SE LITIGANT GUIDE

OFFICE OF THE CLERK OF COURT

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INTRODUCTION

WHO THIS GUIDE IS INTENDED TO ASSIST: This Guide is designed to assist you if i.) you want to file a lawsuit in federal court or you have an active role, either as a plaintiff or defendant, in a case that you or someone else has filed already in federal court, and ii.) you have elected to proceed without assistance of a trained and licensed attorney. This Guide is **not** intended for prisoner litigation.

SOME BASIC DEFINITIONS: Plaintiffs and defendants in court cases generally are referred to as the “parties” or “litigants.” The plaintiff asserts a claim or right protected by law against the defendant; the defendant generally denies the claim or right, and the court determines whether the asserted claims or rights have merit. The great majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties or litigants who are not represented by licensed attorneys and who elect to represent themselves generally are referred to as *pro se* parties or *pro se* litigants. Likewise, plaintiffs or defendants who represent themselves generally are referred to as *pro se* plaintiffs or *pro se* defendants.

HOW THIS GUIDE WAS DESIGNED TO HELP YOU: This Guide will not answer all your questions about what you need to do to represent yourself effectively as a *pro se* litigant. The Guide outlines the basic steps that are required to properly file an **action**, or **lawsuit**, with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the Clerk of Court. However, **you are responsible for learning about and following the procedures that govern the court process**. Although the staff of the clerk’s office can provide *pro se* litigants with general information concerning court rules and procedures, they are forbidden as a matter of law from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action. In addition, the judges of this court cannot give you legal advice since they will ultimately be charged with ruling on motions submitted by the plaintiff and defendant and with trying the case with or without a jury.

A WORD OF ADVICE: Self-representation carries certain responsibilities and risks that *pro se* litigants should be aware of before they proceed. The court encourages all individuals who are considering *pro se* or self-representation to carefully review the risks associated with self-representation and to educate themselves regarding potential consequences.

CAUTION: Rule 11 of the Federal Rules of Civil Procedure prohibits filing lawsuits that are clearly frivolous or filed merely to harass an individual. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, including ordering you to pay a fine to the court or pay the legal fees of the person or persons against whom you filed the lawsuit. In certain types of cases, such as employment discrimination cases, if you lose, you may be required to pay the legal fees of the winning party. In all cases, if you lose, you may be required to pay some of the costs the winning party incurred in the course of the lawsuit.

SECTION I

IMPORTANT ISSUES TO CONSIDER BEFORE YOU DECIDE TO REPRESENT YOURSELF IN AN ACTION BEFORE THIS COURT

A. IS THIS THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

The United States District Court for the Southern District of Alabama is one of 94 trial courts in the federal court system. Federal courts can only hear limited kinds of cases. As is the case in all federal trial courts, this court is authorized only to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal law (as opposed to state law);
3. Those that involve the United States of America as a party, whether plaintiff or defendant; and
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

If your complaint does not fall under any of these categories, you should not file it in this court.

B. IS THERE AN ALTERNATIVE TO APPEARING PRO SE (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in the federal court employ a licensed attorney who practices law, has appeared in court, and is familiar with the rules of procedure that govern court processes. Some attorneys may be willing to accept your case on a contingency basis where the attorney would receive a fee based upon a percentage of your recovery if you win your case, and the attorney would get nothing if you do not prevail. There are provisions under some laws that require the other side to pay your attorney's fees should you win your case.

Most attorneys are careful when screening cases before agreeing to accept them in order to make sure potential clients have a viable chance for winning a case which would allow them to collect a fee. If an attorney rejects your case, reasons for such an action could be based on considerations such as:

- (1) There may be no merit to your case;

- (2) You may not be able to prove anyone liable for wrong done to you;
- (3) The wrong done to you may not be severe enough to warrant monetary damages;
- (4) You have no witnesses; or
- (5) Your witnesses are not credible.

If you would prefer to have an attorney represent you but are unable to retain one who will take your case on a contingency basis, or you simply cannot afford to pay high hourly fees, you may want to consider contacting the following services.

Alabama Legal Services - (251) 433-6560
Lawyer Referral Service - (251) 433-1032
Volunteer Lawyer Program - (251) 433-9973

If you are unable to find an attorney to represent you, you have the right to pursue your claim(s) in the court by appearing without representation or *pro se*, a Latin phrase meaning “for himself.” Bear in mind that as a *pro se* litigant, you are representing only yourself and presenting only your claims and defenses. Under the law, you cannot speak for another person, a company, or other entity such as a club or association that includes other individuals. **When you appear *pro se*, you must follow the same rules and procedures that licensed attorneys practicing in this court must follow. Generally, judges hold *pro se* litigants to the same standards of professional responsibility as trained attorneys.**

C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW APPLICABLE FEDERAL LAWS AND PROCEDURES AND THIS COURT’S LOCAL RULES OF PROCEDURE?

As a *pro se* litigant, you must be familiar with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. These rules set forth the general procedural requirements for litigating cases in all federal courts. Federal laws can be found in the United States Code, abbreviated as U.S.C. The contents of each of these publications can be found on the Internet at the following website addresses:

<http://www.law.cornell.edu/rules/frcp/overview.htm>
<http://www4.law.cornell.edu/uscode/>
<http://www.law.cornell.edu/rules/fre/overview.html>

As a *pro se* litigant, you must also be familiar with our District Court’s local rules which apply specifically to court proceedings in our court. You can obtain a copy of the Local Rules at the District Court Clerk’s Office free of charge or you can access this publication on our court’s Internet website at:

<http://www.alsd.uscourts.gov>

Some public libraries have computers with Internet services that would be available to you for reviewing these publications in the event you do not otherwise have access to those resources.

SECTION II

PROCEEDING WITH YOUR CASE

A. HOW DO YOU ESTABLISH YOUR CASE IN OUR COURT?

Preparing Your Complaint: The **plaintiff** or person bringing the lawsuit to court files a **complaint**. The complaint outlines a problem or reason for the lawsuit, also known as a **cause of action**. When preparing your complaint, you should use 8½" x 11" (letter size) paper. The contents must include the following:

- (1) A short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it,
- (2) A short and plain statement of the claim showing that you are entitled to relief, and
- (3) A demand for judgment for the relief to which you deem yourself entitled.

The complaint (and any other type of pleadings that are filed such as motions, etc.) shall contain a caption setting forth the name of the court, the title of the action, the case number (if already assigned), and a designation such as "Complaint," etc. **Refer to Appendix A for the proper format.**

In setting forth your claim against defendants, you are only required to state exactly what happened by stating FACTS, not conclusions, and what relief you want. For example, a complaint setting forth conclusions might read:

"The Commissioner of the Social Security Administration denied me my right to Social Security benefits."

whereas, a complaint setting forth facts would read:

"The Commissioner of the Social Security Administration issued an unfavorable decision on July 27, 2000."

Your statement of claim should not contain legal arguments or citations of cases. However, these may be submitted separately from the complaint if desired.

You must clearly identify all defendants by name and address, and it is your responsibility to determine the identity of any and all defendants you wish to sue. Check to see that you have included all relevant names, addresses, and dates in your complaint. You may attach as an

exhibit any written instrument you have referred to in your complaint which you would like to make a part of the complaint. You must sign the complaint and state your address and phone number. If there is more than one plaintiff, each must sign the complaint as well as all future pleadings. Remember, if you are proceeding *pro se*, you can only represent yourself; you may **not** represent another person or party.

You can file your complaint by hand-delivering it or mailing it to the Clerk's Office. The District Court's mailing address and phone number is:

**U.S. District Court
113 St. Joseph St.
Mobile, AL 36605**

(251) 690-2371

Whether you deliver or mail your complaint to the court, you must submit: (i) an original complaint and a copy for each defendant, (ii) a completed **civil cover sheet** (blank forms can be obtained from the Clerk's Office), and (iii) the \$250.00 filing fee (unless you are proceeding *in forma pauperis* as discussed on Page 13 of this guide). Once received in the Clerk's Office, the complaint is given an action number and assigned to a district judge and a magistrate judge.

Service of Your Complaint: Each defendant or person named by the plaintiff must be notified of the lawsuit through a process that is specified by law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. Detailed instructions for service of process are described in **Rule 4** of the **Fed.R.Civ.P.**; you must carefully review this rule to make sure you are familiar with these instructions. If these service of process requirements are not followed correctly, the case can be dismissed for failure to effect proper service.

As more fully described in Rule 4, service of process requirements can be satisfied in the following manner:

(1) Waiver of Service - Fed.R.Civ.P. 4(d) permits a defendant to **waive service of summons**. This means the defendant agrees to respond to your complaint without being served by means of summons. The Clerk's Office can provide you with a Notice of Lawsuit and Request for Waiver, and a Waiver of Summons form you can mail to the defendant along with the complaint. If the defendant completes and returns the waiver, you will avoid the cost of service by summons as described above. Fed.R.Civ.P. 4(d) describes this process in further detail. (If a defendant is the United States or one of its agencies, employees, officers, or corporations, service of summons cannot be waived.)

(2) Service of Summons and Complaint - Fed.R.Civ.P. 4(c)(2) states, "service may be effected by any person who is not a party and who is at least 18 years of age."

Using this method, you direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). The most common methods for effecting service are certified mail with a return receipt, or personal service. Private process servers will also do this for a fee.

The standard summons form can be obtained from the Clerk's Office and it must be completed by you. After you have completed the form, staff of the Clerk's Office officially **issue the summons** which means that an authorized court employee will sign the form and emboss it with the official seal of the court. Both the summons and the complaint are then served on the defendant. The person who serves the summons must record on the back of the summons form his or her name, the name of the person who was served, and the date and time of service. This section of the summons form is referred to as the **return of service**, and if not completed, service of process is not complete. Rule 4 requires confirmation that service has been completed. Such confirmation or **proof** that the documents have been served on the defendant(s) requires that the original summons form with the return of service completed be returned to the court and that a copy of the form be left with the defendant(s).

(3) Service by the Clerk's Office - If a judge approves your application for waiver of the requirement to pay the \$250 filing fee as described in Section IV of this Guide, and otherwise determines that your case should go forward, the judge may direct the Clerk's Office to serve the summons and complaint, or to send the notice of lawsuit and request for waiver.

After you file your complaint with the Clerk's Office, you have 120 days to serve a copy of it and the summons on the defendant(s). It is your responsibility to effect service; if you fail to do so within 120 days, your case may be dismissed (see Fed.R.Civ.P. 4(m)). It is also your responsibility to notify the court of your efforts to serve process if not effected within 45 days from the filing of the complaint (See Local Rule 4.1).

IMPORTANT NOTE: Although a judge may order that a defendant be served with process, it may be several weeks from the date of the order directing service before service is complete. When a judge orders that a defendant be served, typically the order will only require that a copy of the complaint and a waiver of service form be mailed to the defendant's last known address (as provided by the plaintiff). If a defendant refuses to waive service, even though a waiver of service form is sent to him/her, that defendant must then be served by personal service.

B. WHAT HAPPENS ONCE THE DEFENDANT(S) HAS BEEN SERVED?

Once the defendant has been served with a copy of the complaint, the defendant must file with the court an **answer** or some response within a specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of his response to the plaintiff. In the Southern District of Alabama, once the first defendant files an answer or Fed.R.Civ.P.12(b) motion to dismiss, the court will typically issue a Preliminary Scheduling Order which gives the parties a specified time frame to meet and prepare a Fed.R.Civ.P. 26(f) report of the parties.

Referral to a United States Magistrate Judge: As set forth in the court's Local Rules, it is the practice of this court to refer certain matters to the full-time magistrate judges by standing order rather than individual orders of reference in each action. LR 72.2 sets out the types of matters the magistrate judges will handle without any additional orders of reference. A district judge to whom the case is assigned may also refer dispositive matters to a magistrate judge for entry of a report and recommendation. LR 72.2 sets out procedures for filing objections to such a recommendation. The parties may also consent to proceed to trial before a magistrate judge if all

parties involved sign a written consent, with approval of the district judge to whom the case is assigned.

Filing of Motions and Objections: Either party, the plaintiff or the defendant, may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. The party then signs the motion, submits it or **files** it with the Clerk of Court and sends a copy to the opposing party. (See Appendix B - Certificate of Service Format) The opposing party may then file with the Clerk of Court an **objection** or **responsive pleading** to the motion. This objection sets forth the reasons why the court should deny rather than grant the motion.

Motion Review: The district or magistrate judge normally rules on motions by issuing a written order that either grants, denies, or partially grants and partially denies the relief sought in the motion. The court generally does not schedule hearings in order for the parties to argue the motion or objections.

Entry of Magistrate Judge's Report and Recommendation: Where a case has been referred to a magistrate judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written **Report and Recommendation**, namely, a recommendation that the motion be either granted or denied and stating the reason(s) why. This report and recommendation is forwarded to the district judge assigned to the case and copies are sent to the parties. As a party, you have a certain number of days within which to file objections to the report and recommendation. All objections that are received within the specified time are forwarded to the district judge. The district judge reviews the report and recommendation and any objections that have been filed and will subsequently issue an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's report and recommendation. A **judgment** will also be entered by the district judge in the case. Such judgment is final and can be appealed to the United States Court of Appeals for the Eleventh Circuit located in Atlanta, Georgia.

C. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fee for filing a complaint and opening a civil case in any U.S. District Court is \$250 as specified previously under the section entitled **Filing Your Complaint**. This may be paid by cash, money order, or personal check. Checks and money orders must be made payable to Clerk, U. S. District Court. If you are unable to pay the filing fee, you may apply for permission of the court to proceed without prepayment of fees, commonly referred to as *in forma pauperis*, which is Latin for "in the form of a pauper." Information on filing *in forma pauperis* is located in Section IV on page 13 of this guide.

If the court allows you to proceed *in forma pauperis*, you are not exempted from paying other costs associated with pursuing or litigating your case. If, for example, you need copies of original documents in your case file, the Clerk's Office is required to charge the standard rate of 50 cents per page. If you choose to make the copies yourself, you may use the court's copier at a rate of 25 cents per page, or print electronically available copies at 10 cents per page. Other expenses you will incur include the costs of preparing the original and copies of the papers you file with the court, and mailing or hand-delivering a copy of each paper to the opposing party to satisfy the requirements of service. If your case goes to trial, you may be responsible for certain costs associated with bringing your witnesses to court.

D. WHAT IS THE PROCEDURE FOR SUBMITTING DOCUMENTS TO THE COURT?

As a matter of policy, the court only requires parties to submit for filing with the Clerk of Court an **original** of motions or pleadings. However, should you need a stamped “filed” copy of a pleading or motion for your records, submit an extra copy along with the original and a self-addressed stamped envelope for return mailing. The Clerk’s Office will stamp both the original and the copy, place the original in the court’s case file, and return the copy to you. You may file pleadings with the court in person or by mail.

Requests for court action must be submitted in the form of a motion, complaint or other pleading as authorized by statute or rule. Requests for court action may not be submitted in the form of a letter (see LR 5.1(d)).

Our offices are open to the public from 8:00 a.m. until 5:00 p.m., Monday through Friday, except on federal holidays. For ease of filing, the Clerk also maintains a 24 hour filing depository box located outside the courthouse. Directions for filing are provided on the box, enabling parties to stamp documents with the date and time and deposit them at any time, including weekends and holidays. When mailing pleadings to the court or using the drop box, you should include a stamped self-addressed envelope so the stamped “filed” copy can be returned to you. You may also register for electronic filing on the court’s website at www.alsd.uscourts.gov.

Important Note: When you submit a pleading to the court, you must also mail or deliver a copy of the pleading to the defendant’s attorney, or, if the defendant has no attorney, to the defendant. As an attachment to your pleading, you must include a **certificate of service** that states the date that you mailed or delivered a copy of the pleading to the defendant. The format to be used for the certificate of service is attached to this guide as Appendix B.

E. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?

The Clerk’s Office maintains an automated record or **docket** for every case. This docket is a chronological summary of all significant events in the history of the case. For example, each time you file a pleading or appear for a hearing, an entry summarizing the event is added to the case docket. You may review the docket on the public access terminal located in the Clerk’s Office. As an alternative, if you have a personal computer and modem with communications software, you may access our court’s automated PACER system which allows you to review your case docket directly from your PC. However, in order to use this system you must call the PACER Service Center at 1-800-676-6856 and obtain a login and password. You may also visit their website at <http://www.pacer.psc.uscourts.gov/>. Once you gain access, you will be billed at a rate of 60 cents per minute for dial-up service or on the Internet in a web-based format for an access fee of 8 cents per page. If you wish to have a paper copy of your docket, the staff of the Clerk’s Office will provide one to you at a cost of 50 cents per page. The Clerk’s Office staff can also provide basic docket information to you over the telephone.

F. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE?

You are prohibited from all private or *ex parte* communication with the judge to whom your case is assigned. *Ex parte* communication occurs when one of the parties to a lawsuit, or when that party's attorney, exchanges information with the assigned judge without the opposing party being present or without the knowledge and consent of the opposing party. Because of this prohibition, a judge will refuse, with very few exceptions, to speak or otherwise communicate *ex parte* with any party, or that party's attorney, to a case that is assigned to him. Any communication between the assigned judge and a litigant must be in writing, and a copy of the communication must be sent either to the opposing party or that party's attorney. For example, a party appearing *pro se* must send to the opposing party a copy of any motion sent to the court. Moreover, the motion must indicate that a copy has been sent to the opposing party. Remember, any request for action of the court must be in the form of a motion and cannot be submitted by letter.

G. IF YOU WISH TO APPEAL THE COURTS DECISION ON ANY ORDER ENTERED IN YOUR CASE, WHAT STEPS SHOULD YOU TAKE TO DO SO?

There may be times during the pendency of your case in which the judge issues an order with which you disagree and which you may think an appellate court should review immediately. You should be aware, however, that most orders issued while a case is still ongoing cannot be appealed immediately, and you will have to wait until a final judgment has been entered in your case before the order(s) can be considered by an appellate court. The Federal Rules of Appellate Procedure explain when an order is appealable, and you must familiarize yourself with these rules before filing a notice of appeal. Filing a notice of appeal prematurely will delay final resolution of your case and may add unnecessary expense to your case.

If you file a notice of appeal, you will be required to pay a filing fee of \$255 with the District Court unless you are permitted to proceed *in forma pauperis*. If you wish to proceed *in forma pauperis* for purposes of the appeal, then at the time of filing your notice of appeal, you must also file an application to proceed *in forma pauperis* on appeal.

Once the appellate court is determined to have jurisdiction over the appeal, it will direct the District Court Clerk's Office to transmit the record from the District Court. If you are permitted to proceed *in forma pauperis* on appeal, you may still be required to pay for certain costs, such as the cost for transcribing any hearings or other proceedings that may have occurred before the judge.

SECTION III

EMPLOYMENT DISCRIMINATION CASES

A very common action filed by *pro se* litigants in federal court is alleged employment discrimination. Prior to filing an employment discrimination complaint, the plaintiff is required to follow specific administrative procedures. **NOTE: This is not a complete statement of the law on the administrative procedures to follow in an employment discrimination case. The procedures are complicated, and it is the *pro se* litigant's responsibility to make sure that all procedures are followed correctly and within the applicable time limit. If the requirements are not followed, your case may be dismissed.**

If you wish to file an employment discrimination case in this court, you must first file your charges with the Equal Employment Opportunity Commission (EEOC) where your case will be reviewed. Barring complications, the EEOC will issue you a **Notice of Right to Sue** indicating that (i) the administrative process has been completed, and (ii) no further action will be taken on behalf of the EEOC. Once this notice has been issued, you have a limited time period within which to file your lawsuit; failure to file a complaint within that time period will result in your case being dismissed by the court. A Notice of Right to Sue is not issued where the charges allege employment discrimination based on age; however, not having such a notice will not prevent you from filing an employment discrimination complaint based on this premise.

To assist a party appearing *pro se* in filing an employment discrimination complaint, the Office of the Clerk has established a complaint form to be used specifically for this purpose. This form will be provided to you upon request. When completing the form, you must ensure the information you enter is legible and accurate to the best of your knowledge. When filing your complaint with the Clerk's Office, you must present the Right to Sue Notice which will be included as part of your case file.

SECTION IV

APPLICATION TO PROCEED *IN FORMA PAUPERIS*

As noted earlier in this guide, filing an action in this court requires the plaintiff to pay a \$250 filing fee at the time the new case is filed. If you are unable to pay the fee, you may apply to have payment of the fee waived. Bear in mind that you can apply for waiver of the fee only after your action is filed. The Clerk's Office will accept your case without payment if, at the time you file it, you also apply for waiver of the fee. If the judge subsequently denies your waiver application, you will be required to pay the fee; if you do not pay it within a specified time period, your case will be dismissed.

The application process requires that you complete and submit a **Motion to Proceed Without Prepayment of Fees** in order to be allowed to proceed *in forma pauperis*. The form is included in this Guide, and brief instructions for completing it are as follows:

(1) At the top of the motion, you must note the name of the case or case **caption**. The case name consists of your name as plaintiff above the **v.** and the name of the defendant(s) below the **v.** Staff in the Clerk's Office will enter the case number on the motion at the time your case is filed.

(2) **You must answer all questions truthfully and completely.** If you own real estate or automobiles that have outstanding mortgages or loans, you must be very specific about your debt balance so the magistrate judge who reviews the application has accurate information as to the property's value. You must inform the court how you provide for life's basic necessities if it is not stated fully in your answers to the questions asked. You must complete every blank on the form; if your response is "not applicable" or "zero", mark the blank as "n/a" or "0". Finally, you must sign the statement under penalty of perjury.

The completed motion form must be delivered to the Clerk's Office. It will then be submitted along with your complaint to a magistrate judge for review. If the magistrate judge grants the application, it will be returned with the case file to the Clerk's Office for subsequent processing. You may be required to pay the fee at the conclusion of the case in the event the court determines that you then have sufficient funds. The court may direct you by order to pay the full amount immediately, pay a portion of the filing fee, or pay the fee in installments.

If you are allowed to proceed *in forma pauperis*, before directing the Clerk's Office to serve the complaint and summons, the magistrate judge will have reviewed your complaint to determine if all, or any, of your claims should be allowed to go forward. However, if your complaint or a claim is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief, the magistrate judge will enter a report and recommendation that your complaint or claim be dismissed.

SECTION V

APPOINTMENT OF COUNSEL

Pro se litigants may ask the court to appoint an attorney for them in a civil case. Appointment is discretionary and counsel is only appointed in a few select cases where representation by an attorney seems particularly appropriate or necessary. *Pro se* litigants have no guaranteed right to be represented by court-appointed counsel, and the Court has no funds to pay appointed counsel. If you would like to request that the court appoint counsel to represent you in your lawsuit, you must file along with your complaint a Motion for Appointment of Counsel.

SECTION VI

REQUIREMENT TO DILIGENTLY PROSECUTE YOUR CASE

It is important that you fully understand your obligation to prosecute your case once it is filed.

(1) You are required to diligently prosecute your lawsuit. Unless and until you hire an attorney to represent you, it is your responsibility to do everything necessary to prepare your case for trial. This includes, but is not limited to, responding to discovery requests and motions. It is also your responsibility to try your case in court.

(2) Do not expect any correspondence or orders from the court instructing you regarding procedures for prosecuting your lawsuit. If you fail to follow established procedures, your case will be subject to dismissal for failure to prosecute.

(3) You are required to serve the attorney representing the defendant with copies of all pleadings and motions filed with the court. Likewise, counsel for the defendant is required to serve you with copies of all pleadings and motions filed on behalf of the defendant.

(4) Sometimes, plaintiffs will attach a certificate of service indicating that the Clerk of Court has been served with copies of pleadings or motions. This is not appropriate, and the certificate will be disregarded because it does not satisfy service requirements. It is your responsibility to serve the defendant(s), not the Clerk's Office.

(5) You must keep the court and defendant(s) advised of any change in your address or telephone number. The failure to do so immediately may result in the imposition of sanctions, which may include the dismissal of your case.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
_____ DIVISION

<u>(Name of Plaintiff)</u>	:	
Plaintiff	:	
	:	
vs.	:	Civil Action No. _____
	:	
	:	
<u>(Name of Defendant(s))</u>	:	
Defendant	:	
	:	

COMPLAINT
(Double space text of complaint)

1.

(Grounds for jurisdiction)

2.

(Show plaintiff's name(s) and residence or address)

3.

(Show defendant(s) name(s) and address(es))

APPENDIX A (Cont'd)
COMPLAINT FORMAT

4.

(State briefly your legal claim or your reason for filing suit. Include the statute under which the suit is filed.)

5.

(Give a brief, concise statement of the specific facts involved in your case)

6.

(State the relief you are requesting.)

(Signature and date), pro se

(Address)

(Phone Number)

Plaintiff(s)/Petitioner(s)

CIVIL ACTION NO. _____
(To be supplied by Clerk of Court)

I, _____, a United States citizen, make this Motion to Proceed Without Prepayment of Fees pursuant to Title 28 U.S.C. § 1915 in order to proceed in forma pauperis in this action. I am unable to make prepayment of fees or to give security therefor, and it is my belief that I am entitled to redress. I have not divested myself of any property, monies or any items of value for the purpose of avoiding payment of said fees.

I. BRIEF STATEMENT AS TO THE NATURE OF THE ACTION: _____

II. RESIDENCE:
Your address: _____

(Street)

(City)

(State)

(Zip Code)

III. MARITAL STATUS:
1. Single _____ Married _____ Separated _____ Divorced _____
2. If married, spouse's full name: _____

IV. DEPENDENTS:

1. Number: _____

2. Relationship to dependent(s): _____

3. How much money do you contribute toward your dependents' support on a monthly basis? \$ _____

V. EMPLOYMENT:

1. Name of employer: _____
 - a. Address of employer: _____
(Street)

(City) (State) (Zip Code)
 - b. How long have you been employed by present employer?
Years: _____ Months: _____
 - c. Income: Monthly \$ _____ or Weekly \$ _____
 - d. What is your job title? _____
2. If unemployed, date of last employment: _____
Amount of salary and wages received per month in last employment: \$ _____
3. Is spouse employed? _____ If so, name of employer: _____

 - a. Income: Monthly \$ _____ or Weekly \$ _____
 - b. What is spouse's job title? _____
4. Are you and/or your spouse receiving welfare aid? _____
If so, amount: Monthly \$ _____ or Weekly \$ _____

VI. FINANCIAL STATUS

1. Owner of real property (excluding ordinary household furnishings and clothing):
 - a. Description: _____
 - b. Full Address: _____
 - c. In whose name: _____
 - d. Estimated value ----- \$ _____
 - e. Total amount owed ----- \$ _____
Owed to: _____ \$ _____
_____ \$ _____
 - f. Annual income from property ----- \$ _____
2. Other assets/property, such as automobiles, boats, motor homes, court judgments, etc. (If more than two, list information on back):
 - a.

	<u>Asset (1)</u>	<u>Asset (2)</u>
Make & Model:	_____	_____
In whose name registered?	_____	_____
Present Value of Asset:	_____	_____
Amount owed:	_____	_____
Owed to:	_____	_____
 - b. Total cash in banks, savings and loan associations, prisoner accounts, financial institutions, other repositories, or anywhere else \$ _____
 - c. List monies received by you during the last twelve (12) months, or held for you by banks, savings and loan associations, prisoner accounts, other financial institutions, or other sources as indicated below:
Business, profession or other forms of self-employment - \$ _____

Rent payments, interest or dividends ----- \$ _____
Pensions, annuities or life insurance payments ----- \$ _____
Gifts or inheritances ----- \$ _____
Stocks, bonds or notes ----- \$ _____
Tax refunds, Veteran benefits or social security benefits \$ _____
Any other sources ----- \$ _____

3. Obligations:

a. Monthly rental on house or apartment ----- \$ _____
b. Monthly mortgage payments on house ----- \$ _____

4. Other information pertinent to your financial debts and obligations:

_____ (Creditor)	_____ (Total debt)	_____ (Monthly payment)
_____ (Creditor)	_____ (Total debt)	_____ (Monthly payment)
_____ (Creditor)	_____ (Total debt)	_____ (Monthly payment)

5. If you have indicated that you have minimal or no assets or income, please explain how you provide for your basic living needs such as food, clothing and shelter. (e.g. food stamps, family assistance or charitable contributions.)

Other (Explain): _____

VII. ALL PLAINTIFFS/PETITIONERS MUST READ AND SIGN:

I UNDERSTAND that any false statement(s) of a material fact contained herein may serve as the basis of prosecution and conviction for perjury or making false statements. FURTHER, I CERTIFY that all questions contained herein have been answered and are true and correct to the best of my knowledge and belief.

Date

Signature of Plaintiff/Petitioner

Address

Phone Number

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF DEF

Citizen of This State☐ 1☐ 1

Citizen of Another State☐ 2☐ 2

Citizen or Subject of a Foreign Country☐ 3☐ 3

Incorporated *or* Principal Place of Business In This State

Incorporated *and* Principal Place of Business In Another State

Foreign Nation

PTF DEF

☐ 4☐ 4

☐ 5☐ 5

☐ 6☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div><div>PERSONAL INJURY</div><div><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury</div></div> <div><div>PERSONAL INJURY</div><div><input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <div>PERSONAL PROPERTY</div><div><input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div></div></div>	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <div>LABOR</div> <div><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</div>	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <div>PROPERTY RIGHTS</div> <div><input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark</div> <div>SOCIAL SECURITY</div> <div><input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</div>	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

District of _____

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within _____ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 30%;"> Executed on _____ <div style="text-align: center; margin-top: 5px;">Date</div> </div> <div style="width: 60%;"> _____ <div style="text-align: center; margin-top: 5px;"><i>Signature of Server</i></div> _____ <div style="text-align: center; margin-top: 5px;"><i>Address of Server</i></div> </div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the

(D) _____ District of _____

and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of

_____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)

B—Title, or other relationship of individual to corporate defendant

C—Name of corporate defendant, if any

D—District

E—Docket number of action

F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of _____,
(CAPTION OF ACTION)

which is case number _____ in the United States District Court
(DOCKET NUMBER)

for the _____ District of _____.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____,
(DATE REQUEST WAS SENT)
or within 90 days after that date if the request was sent outside the United States.

(DATE) (SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.